

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, May 28, 2003, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jon Carlson, Steve Duvall, Roger Larson, Cecil Steward, Mary Bills-Strand and Tommy Taylor; (Krieser and Schwinn absent); Marvin Krout, Ray Hill, Steve Henrichsen, Mike DeKalb, Brian Will, Tom Cajka, Becky Horner, Greg Czaplewski, Duncan Ross, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Vice-Chair Cecil Steward called the meeting to order and requested a motion approving the minutes for the regular meeting of the Planning Commission held on May 14, 2003. Larson moved approval, seconded by Carlson and carried 6-0: Carlson, Duvall, Larson, Steward, Bills-Strand and Taylor voting 'yes'; Krieser and Schwinn absent.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

May 14, 2003

Members present: Carlson, Duvall, Larson, Steward, Bills-Strand and Taylor; Krieser and Schwinn absent.

The Consent Agenda consisted of the following items: **COUNTY SPECIAL PERMIT NO. 202; SPECIAL PERMIT NO. 1869B; FINAL PLAT NO. 02044, DOLEZAL 4TH ADDITION; FINAL PLAT NO. 03008, WILDERNESS RIDGE 6TH ADDITION; COMPREHENSIVE PLAN CONFORMITY NO. 03005 and STREET AND ALLEY VACATION 03006.**

Item No. 1.1, County Special Permit No. 202, was removed from the Consent Agenda and scheduled for separate public hearing.

Bills-Strand moved to approve the remaining Consent Agenda, seconded by Larson and carried 6-0: Carlson, Duvall, Larson, Steward, Bills-Strand and Taylor voting 'yes'; Krieser and Schwinn absent.

Note: This is final action on the Dolezal 4th Additional Final Plat No. 02044 and the Wilderness Ridge 6th Addition Final Plat No. 03008, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

COUNTY SPECIAL PERMIT NO. 202,
TO ALLOW A TEMPORARY RESIDENCE
IN A MOBILE HOME, ON PROPERTY GENERALLY
LOCATED AT S.W. 84TH STREET AND W. PIONEERS BLVD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 28, 2003

Members present: Larson, Bills-Strand, Duvall, Carlson, Taylor and Steward; Schwinn and Krieser absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

This application was removed from the Consent Agenda at the request of the applicant. The Clerk announced that the record consists of one letter in support from Bret Corbridge, 7401 W. Old Cheney Road.

Proponents

1. Candice Edwards, 4505 S.W. 84th Street, submitted a letter from her mother's physician, Dr. Robert E. Quick, in compliance with Condition #1.1, which requires medical documentation of the health needs of the resident of the mobile home.

Opposition

1. Al Harre, who owns land on S.W. 91st & Old Cheney Road, expressed that his only concern is water and the length of time for this special permit.

Mike DeKalb of Planning staff advised that the conditions of approval require medical documentation. The special permit allows one mobile home as a second residence on the property. The special permit is for one year with automatic renewal as long as the medical condition still exists. The mobile home would be required to be removed at the end of the medical condition. In addition, the conditions of approval require that the placement and construction must be completed in compliance with the approved plans, and approval of the water and wastewater systems must be acquired from the Health Department.

Steward clarified that the effect of the one year approval is that it is the responsibility of the applicant to make the annual application. If not made annually, the special permit ceases to be valid. DeKalb concurred.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

May 28, 2003

Taylor moved approval of the staff recommendation of conditional approval, seconded by Carlson and carried 6-0: Larson, Bills-Strand, Duvall, Carlson, Taylor and Steward voting 'yes'; Krieser and Schwinn absent.

CHANGE OF ZONE NO. 3407
FROM R-2 RESIDENTIAL TO R-3 RESIDENTIAL,
and
SPECIAL PERMIT NO. 2017,
MAPLE VILLAGE COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT CHERRYWOOD DRIVE AND
SYCAMORE DRIVE.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 28, 2003

Members present: Larson, Bills-Strand, Duvall, Carlson, Taylor and Steward; Schwinn and Krieser absent.

Staff recommendation: Deferral.

Ex Parte Communications: None.

Proponents

1. Brian Carstens appeared on behalf of **Mike Moser**. Carstens indicated that the applicant had met with Public Works this morning and would request a two-week deferral for further research and to work with the adjacent neighbor to the south.

Carlson moved to defer two weeks, with continued public hearing and administrative action scheduled for June 11, 2003, seconded by Bills-Strand, and carried 6-0: Larson, Bills-Strand, Duvall, Carlson, Taylor and Steward voting 'yes'; Krieser and Schwinn absent.

There was no other testimony.

COUNTY SPECIAL PERMIT NO. 201
FOR A WIRELESS FACILITY
ON PROPERTY GENERALLY LOCATED
AT HWY 77 AND BRANCHED OAK ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 28, 2003

Members present: Larson, Bills-Strand, Duvall, Carlson, Taylor and Steward; Schwinn and Krieser absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Proponents

1. Michael Healey appeared on behalf of **Alltel Communications**. He stated that this special permit will consist of a 190' communications tower. It will be a monopole design without guyed wires or lattice work, and designed to accommodate at least two future carriers. Healey informed the Commission that when searching for a site like this, the ideal candidate is an existing structure of sufficient height upon which to collocate; however, there are no existing tall structures within the vicinity of this particular search area. The applicant believes this site is the next best thing, i.e. the site is located on AG property, and is surrounded by agricultural property. This application meets all of the standards of the zoning code. There are no waivers being requested.

Steward sought confirmation that the applicant has verified that this structure will not be in the Capitol View Corridor. The applicant concurred.

There was no testimony in opposition.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

May 28, 2003

Larson moved to approve the staff recommendation of conditional approval, seconded by Duvall and carried 6-0: Larson, Bills-Strand, Duvall, Carlson, Taylor and Steward voting 'yes'; Krieser and Schwinn absent.

SPECIAL PERMIT NO. 1583A,
FOR A COMMERCIAL PARKING LOT IN A RESIDENTIAL DISTRICT,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 17TH STREET AND GARFIELD STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 28, 2003

Members present: Larson, Bills-Strand, Duvall, Carlson, Taylor and Steward; Schwinn and Krieser absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: Carlson reported that he had received a voicemail from the store manager, which he forwarded on to the neighborhood association.

Greg Czaplewski of Planning staff submitted a letter from the applicant requesting deferral until the July 9th Planning Commission meeting, and six email messages in opposition.

Larson moved deferral, with continued public hearing and administrative action scheduled for July 9, 2003, seconded by Bills-Strand and carried 6-0: Larson, Bills-Strand, Duvall, Carlson, Taylor and Steward voting 'yes'; Krieser and Schwinn absent.

Proponents

The applicant did not make a presentation.

Opposition

1. Kevin Cypher, 1800 Garfield, testified in opposition. He is an adjacent property owner. His bedroom and kitchen wall is 5' from the fence that separates the property. There is 3' from the parking lot pavement to the fence. If the parking lot is allowed to progress, it will be 8' from his kitchen and bedroom wall where cars will park 24 hours a day. Along with noise, there will be more trash. These are annoying living conditions and his property value will definitely decrease.

2. Genevieve Randall, 1810 Garfield, testified in opposition. She does not want the house removed because it will be ugly cement instead of a lovely little historic house in a historic district. There will be more noise, kids congregating in the parking lot, etc. She pointed out that the existing grocery store parking lot is never full.

3. Clint Nelson, 1810 Garfield, testified in opposition. He also pointed out that the parking lot is never full and it would be a shame to lose that house to a slab of concrete.

PRELIMINARY PLAT NO. 03002,
PIONEER BUSINESS PARK ADDITION,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 6TH STREET AND CALVERT STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 28, 2003

Members present: Larson, Bills-Strand, Duvall, Carlson, Taylor and Steward; Schwinn and Krieser absent.

Staff recommendation: Deferral.

Ex Parte Communications: None.

Proponents

1. Rick Onnen, of Engineering Design Consultants, appeared on behalf of the applicant. There is an additional waiver that was not included with the last submittal. Therefore, in order for the waiver to be properly advertised, he requested a two-week deferral.

Duvall moved to defer two weeks, with continued public hearing and administrative action scheduled for June 11, 2003, seconded by Carlson and carried 6-0: Larson, Bills-Strand, Duvall, Carlson, Taylor and Steward voting 'yes'; Krieser and Schwinn absent.

There was no other testimony.

SPECIAL PERMIT NO. 2014
NORTHVIEW VILLAS COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT NORTH 24TH STREET AND DODGE STREET.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 28, 2003

Members present: Larson, Bills-Strand, Duvall, Carlson, Taylor and Steward; Schwinn and Krieser absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Becky Horner of Planning staff submitted a letter in opposition due to traffic concerns, and information from Carol Brown with regard to traffic counts.

Proponents

1. Brian Carstens appeared on behalf of **Regal Building System**. This is a special permit for 61 multi-family units in 9-plex buildings (one building has 7 units). Dodge Street leads out to Old Dairy Road and then out to 27th Street. There is office zoning to the north, a medical building and future day care center to the west.

Carstens stated that back in the year 2000, Special Permit No. 1820 was approved on this site for 128 units of elderly housing with an additional 60 domiciliary beds. Regal had intended to build the 3-story building, but market studies have shown that it is not feasible in that area.

This project is designed according to a project they found in Pennsylvania, with basically one story on the high side with walkout basement. There will be 5 units on the top floor, and four units on the lower level, all with attached garages. The proposal provides more parking than is required. These plans have been purchased from the architect, so what is being shown is what will be built.

Carstens advised that they did meet with the neighbors two weeks ago. The trip generation has been the main issue. The applicant has done the calculations and the previously approved special permit trip generation during the a.m. peak hour was 20 trips. This proposal is 31 a.m. peak hour trips. The p.m. peak hour trips are 23 versus 38 under the new proposal. However, Carstens submitted that the size of the building is much more compatible with the duplexes that are being built to the south.

Carstens suggested that based upon the number of acres, 45-50 duplex units could be constructed on this site. The allowed density is 69—this application proposes 61.

Carstens reviewed the site plan, showing all private roadways internally. They do show a system of sidewalks through the main areas that connect to the proposed bike trail. Carstens requested that Condition #1.1.7, which requires sidewalks on both sides of all internal driveways, be deleted. The developer believes that this should be treated as an apartment complex and they believe they have shown proper circulation.

2. Marty Fortney, 2610 Park Boulevard, the developer, showed renderings depicting the scale of the original approved project versus what is being proposed today. He conveyed that this project will provide affordable housing. Under the proposed plan, the lower units would be about \$79,950 to \$85,000, and the upper units would be about \$95,000 to \$105,000 (1170 to 1250 sq. ft. units). The intent is to condo it; however, there may still be some rentals. He believes this project fits into the subdivision better than the previously approved plan. The assisted living and senior housing market conditions have changed considerably since the previously approved plan.

Steward commented that besides the trail, there are desirable commercial establishments on both sides--east and west. This is not just an issue of circulation within or access only to the trail, but probably from this set of units to commercial establishments east and west. Carstens noted that there is a major drainage ditch on the other side that cannot be crossed. The trail does connect across 27th Street behind Kush Furniture.

Opposition

1. **Carol Brown**, 2201 Elba Circle, appeared on behalf of the **Landon's Neighborhood Association**, located off of 21st & Superior. The neighborhood association has been working on zoning issues and what is going to be developed on this property since 1996. In 1997, the neighborhood brought forward a petition in opposition to commercial zoning because there was a proposal for commercial and the neighbors were opposed due to traffic concerns because of the school, the neighborhood and other commercial development in the area. Brown then referred to the previously approved plan with the child development center, the bank, the medical clinic and the elderly housing project. The neighbors agreed to the R-4 zoning based upon the previously approved development actually being built. The neighborhood was in support because the elderly would be within walking distance of a medical clinic, bank, several restaurants, gas station, etc. The neighborhood also had hoped that the elderly would spend some time helping out with school functions. Special Permit No. 1821 for the day care center was also approved. The neighborhood would have opposed the R-4 zoning if they had not seen the plan that was brought forward and approved.

Brown stated that Landon's Neighborhood is opposed to the multi-family because of the increased traffic on 24th Street relating to actual traffic studies. They did a walk-through with traffic engineers last week for 21st & Superior because the crossing is so treacherous for the children going to school. The traffic is horrible all the way around there. It would be nice to have a new traffic study done in this area. There is only one way out of the proposed apartment complex onto 24th Street. 24th Street is highly traveled at this time. If this development does off-street parking, it would not be legal. As it is, in the area where there are driveways in the townhomes, the measurement of off-street parking is not legal and they are parking all over up and down Dodge Street.

In addition, the increase to the student level at Campbell would put an extreme burden on the school. It is already past the maximum. They will still have two portables. Traffic is a very big problem around the school.

Brown inquired as to where the guests to this development would park. It is a bad policy to not have sidewalks. It is a danger to small children.

Landon's would prefer to see this developed into the townhomes that are already existing and being built. They are selling like hot cakes. Or, the neighborhood would like to see the previously approved assisted living project developed. Otherwise, the Landon's Neighborhood will be pursuing a rezoning on this property to return it to R-3, because that was the good will agreement that they had with Mike Rierden years ago.

Brown went on to suggest that this is a very affordable housing area and families from outside the city limits are buying these homes for their college students. For example, the home next door to her was purchased by a single person who now has about 5 people living there. There are six cars parked illegally in front of the house. Because this is an affordable housing area, that is what is going to happen—it will be bought up by young families with lots of children; there are going to be more cars; families outside of the city limits will buy the homes for their college students and to provide revenue.

Brown pleaded that the Commission vote against this proposal because there is a long standing "soreness" in the neighborhood.

Bills-Strand was interested in how much the area has changed since 2002. Brown believes it has changed tremendously. There are a lot more townhomes on Dodge Street and 25th. The neighbors do appreciate the townhomes, but it is very hard to get out onto Superior Street. It is also difficult to get out on Fairfield Street.

Carlson inquired about the petition filed by the Regalton Homeowners. Brown stated that the Regalton petition is much different than the Landon's petition filed previously. The Landon's Neighborhood has 123 residents. They had a lot of negotiations with Rierden on the previous development and now it's coming back to haunt them and they are feeling very bitter about it.

2. Kathy Tiede, 2440 Dodge Street, who lives immediately south of the proposed apartment complex, testified in opposition. She built her duplex/townhouse in September of 2001 and moved into it in January, 2002. A significant part of her decision to buy was the location and the neighborhood. She was told that the area to the north would be a one-story assisted living facility. She anticipated a quiet neighborhood. She is also concerned about traffic. Dodge Street cannot safely carry the additional traffic from 61 apartments. The 24th and Dodge intersection is already very dangerous. She is also concerned about water drainage from the apartment area. She wants assurance that the rain and snow drainage is adequate for an area that has previously been an alfalfa field. If the apartment plan must be approved, she is hopeful that the landscaping and screening standards are enforced. She wants a neighborhood separate from a larger apartment complex. At a minimum, the eleven points in the staff analysis must be enforced. However, her preference is that the application be denied.

3. Kerry Anderson, 2431 Dodge Street, testified in opposition. He moved into the property in August 2001. His overriding concern is the apparent opportunity of the developers to have free-reign on building on the properties they have purchased. He was influenced by the construction of an assisted living facility directly north of his home which was advertised in a brochure supplied to consumers. If he had known about the apartment type dwellings, he would never have purchased the property. The traffic situation on No. 24th and Dodge is already very hazardous, and it would be an even bigger concern with 61 dwelling units and an additional 100+ vehicles in and out daily. There needs to be a stop sign at 24th & Dodge due to the traffic at Campbell Elementary. There is not even a yield sign at that intersection. Finally, if this is approved, Anderson urged that the eleven points of analysis in the staff report are addressed and the developer is held accountable.

4. CL Garrison, who has been a homeowner in Regalton at 2455 City View Court, at the curve of Old Dairy Road, since 2002, testified in opposition on behalf of the homeowners in Regalton. The developer has not informed the Regalton homeowners about this development. They have had to rely on assistance from others to inform them. Mr. Fortney is the President of the Regalton Homeowners Association, and as their builder, she alleged that he “spouts” many untruths. She did not receive notice of this issue from Mr. Fortney. For two years she has been using these streets daily. None of this was discussed with her when she was buying her home for \$156,000. Garrison is curious about the issue of affordable housing. What income level are they talking about for affordable housing?

Garrison also pointed out that at the last Planning Commission meeting, Regalton residents attended to prevent this project from being passed. That meeting was canceled and the Regalton homeowners were told that an association meeting would be held. Fortney has never met with Regalton on this issue. The Regalton homeowners know that this is his practice--to refrain from giving them information because he holds 100% of the votes at this time. He has already built slab homes and rentals in their midst.

Garrison bought an expensive home that she has well-maintained. It is unfortunate that the safety and pride of the builder and her neighbors is disillusioning. Her home is the biggest floor plan sold, so the value of her home is not in balance with any of the townhome structures in a 6-mile radius, and the assessment is lower than it should be. She has already lost \$20,000 on her home. Her grandchildren cannot play in the yard because of the traffic. Fortney has never fixed her sprinkler system problem. Garrison wants the safety and security that she was originally promised.

Staff questions

Carlson addressed the traffic issue. If we were back to R-2 or R-3 zoning, how many units would be allowed? Becky Horner of Planning staff stated that the density would be about 6 units per acre, or about 30 units on 5 acres.

Carlson asked Public Works to address the trip counts. Dennis Bartels of Public Works presumes some of the interior traffic numbers may be somewhat higher now. The ones he saw were 1999 counts. The counts are projections about what this development will generate. He would agree that in the pm peak hour, this project would generate approximately 38 additional trips over the vacant ground that is there now.

Steward noted that the intersection of Superior and 24th is the only outlet for this development. He inquired as to whether it is signalized. Bartels stated that there is not a signal at 24th and Superior. Steward then inquired whether it is turn protected. Bartels indicated that the median is open so that you can make a left turn if the traffic will permit. There are times when it is difficult to make a left turn because of proximity to 27th Street. In order to be signalized, it would have to meet the warrants. This is an area monitored by the traffic engineer. If we start adding signals, there would be signals two blocks apart and it would start to affect the traffic capacity on Superior. This neighborhood has connection from 24th to Dodge to get to Old Dairy Road, which is also being considered for a signal on 27th Street. The other signalized intersections in this square-mile are at Fairfield and 27th Street and 19th and Cornhusker.

Bills-Strand inquired where one would turn west on Superior if living in this area just south of the proposal. Bartels suggested that you would probably either have to go to 14th Street, or you could make a right turn and go back to Superior Street, or down to Fairfield, one-half mile south of Superior.

Taylor asked staff to address the request to delete Condition #1.1.7. Horner stated that the staff believes the sidewalks are necessary for internal circulation. It is not a standard because it is a private driveway, but staff believes it is still necessary.

Response by the Applicant

Fortney responded to the opposition, stating that Regalton Association had a meeting in March where he did hand out photographs of the proposed development, discussed the options, and listened to some concerns. Traffic was a concern at that point, also.

Fortney acknowledged that there are some obvious tensions with Landon's Association. He got involved with the property about 3 years ago and he was not aware of the history of the previous applications.

With regard to the value of the townhomes, Fortney advised that there are two more cul-de-sacs currently in being constructed and he believes those lot values will be \$1,000 to \$3,000 higher than what is currently being marketed. Typically, the cul-de-sac lots are higher priced. He does not believe the price will go down. He likes to act in the best interests of Regalton and he was looking at a design standpoint. He is looking at less volume of people with the

apartment development as opposed to the assisted living. There will not be any parking allowed in the private driveways. He will also discourage parking on 24th Street. There are some traffic concerns and he would encourage a light at 24th & Dodge.

Steward asked the developer to clarify the total number of townhomes when the townhome development south of this application is completed. Carstens responded that there are 122 units approved.

Bills-Strand inquired as to when Fortney purchased the property. Fortney stated that it was about three years ago when he purchased it from Lincoln Federal.

Steward inquired about the disposition of the strip of property north of this application. Fortney believes that it is zoned O-3, but he does not own that property.

ADMINISTRATIVE ACTION BY THE PLANNING COMMISSION:

May 28, 2003

Carlson moved to deny, seconded by Taylor.

Carlson's concern is that there was a recent upzoning with the expectation of domiciliary care, with substantial neighborhood input. If we don't have that upzoning, it's back to 30 units. He is a little concerned about "changing horses in the middle of the stream" when we are basically doubling the units that would have been allowed otherwise. Traffic is an issue. Expectations are an issue. It sounds like lots of townhomes and that's a good thing, but if you get an upzone with the intention of one thing, and then bring back something different, and there is substantial opposition, he thinks we need to step back.

Taylor concurred with Carlson. There needs to be more communication with the surrounding neighbors. Secondly, he has problems with the determination of how much traffic that area can really receive. He is not comfortable with the studies that have been made for the traffic analysis in that area.

Bills-Strand commented that the original proposal is for three stories—188 units of retirement housing. This area is just booming. The townhouses have been selling like hot cakes out there. She also noted there to be so many apartments out there right now and she has heard that vacancies are really high right now. So, she is not sure why this would be a better plan. The traffic issues for the schools have not been addressed.

Larson believes the affordable housing feature is worthwhile and this is a good area for it. Bills-Strand further commented that we are continuing to push for high density, and yet with high density comes high traffic. It's a struggle.

Duvall will vote against the motion. He believes that multi-family uses close to O-3 and the R-2 are appropriate. Traffic is a real issue, but he does not see any significant difference between people living in condos versus a retirement facility.

Steward commented that this is a very tough site. The development has occurred so rapidly around it that it has sort of taken on an isolated doughnut hole characteristic. He worries about it – if not this, then what? He believes that the “what” has limited options based upon the land uses surrounding it. In one sense, if we are looking for higher density, walkable neighborhood connections that have commercial, multi-family, multi-level of economic structure, a school, and a trail, this proposal has a lot of the characteristics that we would be seeking if talking about an urban village concept. And yet, the traffic is likely to only become a greater problem, but we have the situation in our planning that almost always the traffic accommodations are catching up with the development pressures, and he believes that with all the other pressures out in this area that there will be more accommodations from the traffic engineering and installations. Therefore, on balance, Steward indicated that he would be voting against the motion to deny.

Motion to deny failed 2-4: Carlson and Taylor voting ‘yes’; Larson, Bills-Strand, Duvall and Steward voting ‘no’; Krieser and Schwinn absent.

Duvall moved conditional approval, as set forth in the staff report, seconded by Larson.

Bills-Strand would like to see the city come in and look at removing any on-street parking and putting a light in there.

Carlson stated that he is still not supportive of this application, but he is supportive that we need to find more mixed uses and design becomes the issue. He is not satisfied with this design and what we are encouraging in design. Design needs to lessen the traffic situation instead of exacerbate the traffic situation.

Motion for conditional approval failed 4-2: Lawson, Bills-Strand, Duvall and Steward voting ‘yes’; Carlson and Taylor voting ‘no’; Krieser and Schwinn absent.

This application is held over with continued public hearing and administrative action scheduled for June 11, 2003.

SPECIAL PERMIT NO. 2015

FOR AUTHORITY TO ERECT A 220' BROADCAST TOWER

ON PROPERTY GENERALLY LOCATED AT

NORTH 33RD STREET AND GLADSTONE STREET.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 28, 2003

Members present: Larson, Bills-Strand, Duvall, Carlson, Taylor and Steward; Krieser and Schwinn absent.

Staff recommendation: Revised from deferral to conditional approval, as revised on May 23, 2003.

Ex Parte Communications: None.

Brian Will of Planning staff submitted a revised recommendation of conditional approval. At the last meeting the staff had recommended deferral to allow the opportunity for review by the Nebraska Capitol Environs Commission as to any impact on the Capitol View Corridor. Since that time, the applicant has done additional work and provided photo simulations of this tower located within that corridor. Ed Zimmer has reviewed that information and the determination has been made that there is no significant impact on the Corridor and that the application therefore does not need to go before the Capitol Environs Commission for consideration. In light of that information, staff has now revised the staff report to a recommendation of conditional approval with a minor change to Condition #1.1.1 and #1.1.2 relative to the required landscaping.

Proponents

1. Bill Frost, Chief Engineer for **Nebraska Broadcasting**, 4343 O Street, testified as the applicant. He stated that the applicant has made attempts to locate the tower as far back away from any public or private thoroughfares as possible. He reiterated that there will be no strobe lights on this tower. The applicant agreed with the revised conditions of approval.

2. Dick Bergt, of **Architectural Design Associates**, appeared on behalf of the owner of the property. He believes that the applicant has met all of the conditions of approval. Additional landscaping has been added since the initial submittal, with 32 trees surrounding the tower. All of the trees will be 35' to 60' tall and will provide the required 70% screen from zero to eight feet. Bergt reiterated, also, that there will be no strobe light on this tower. A concrete approach off the existing No. 33rd Street cul-de-sac will be provided, which will be 20' in from the street curb, and then there will be a 12' wide crushed rock or gravel access drive.

There was no testimony in opposition.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

May 28, 2003

Larson moved to approve the revised staff recommendation of conditional approval, seconded by Bills-Strand and carried 6-0: Larson, Bills-Strand, Duvall, Carlson, Taylor and Steward voting 'yes'; Krieser and Schwinn absent.

COMPREHENSIVE PLAN AMENDMENT NO. 03008
FOR A COMMERCIAL DESIGNATION ON PROPERTY
GENERALLY LOCATED AT NO. 84TH AND HAVELOCK AVENUE.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 28, 2003

Members present: Larson, Bills-Strand, Duvall, Carlson, Taylor and Steward; Krieser and Schwinn absent.

Staff recommendation: Denial.

Ex Parte Communications: None.

This amendment was held over from the special public hearing of the Planning Commission on the Comprehensive Plan Annual Review held on May 21, 2003, due to the failure of a motion to deny and the failure of a motion to approve.

Steve Henrichsen of Planning staff submitted a memorandum from Public Works indicating that Public Works believes there are transportation and floodplain issues that still need to be resolved. Public Works believes that a traffic study should be done and that improvements on Havelock or 84th Street should be addressed.

Henrichsen also submitted a letter from Charles Willnerd on behalf of the Lancaster County Agricultural Society.

Proponents

1. Charles Willnerd, 12600 So. 82nd, Roca, appeared on behalf of the Lancaster County Agricultural Society, the applicant. He advised that they have been talking with staff again, and continue to offer compromises on the floodplain issue with regard to the original fill permit that was acquired in 1999, prior to the first phase of construction on the facility. There is still some space that has not been filled and they are willing to trade that area to result in the same net fill area. Staff has found the original certified copy of the survey for the net fill provided in 1999, and they have had opportunity to review it.

With regard to the traffic study being requested by staff, Willnerd suggested that it is premature because they do not know when this property will actually be developed. There is

a need for rezoning and other land use approvals, and he believes it would be prudent to do a traffic study at the time when the variables are known. These are expensive studies and they would be using tax dollars to do the study. It seems like at this time there is no way anyone can predict in that study exactly what factors will occur until we know the type of use on the site, as well as adjoining sites that may be developed from now until the time the event center does any developing. He urged that the requirement for a traffic study is very premature, plus it will have to be done anyway when the actual permit for the change of zone and use is applied for at some future date.

2. J.D. Burt of Design Associates of Lincoln, 1609 N Street, also testified on behalf of the applicant. He reiterated that when this site was originally designed, application was made through the city and the Army Corps of Engineers and approval was received from FEMA with a “no rise” letter on a grading plan that was put together. There was some design grading done with detention on the east portion of the site which required participation of FEMA. The overall grading plan received approval from all involved and wetlands were not disrupted. They also have a floodplain permit in process that would fill the portion to the east. That permit is being held up due to this amendment. To address the Public Works’ concern on the floodplain, the applicant would propose to modify the permit to delete a portion of the fill, and instead of filling, would modify the 1999 “no rise” permit to delete the same volume of fill material that has already been approved. It is a trade within the site.

Burt acknowledged the Public Works’ concerns about potential median openings in Havelock Avenue, if and when that road is ever widened. In fact, through 6-7 years of dealing with this site, the Ag Society has been aware that the westerly drive would likely not be accommodated with a median opening. Burt indicated that he is not sure at what point the traffic study is appropriate, but it always tends to come along with the change of zone and use permit.

There was no testimony in opposition.

Staff questions

Carlson asked whether there is any change to the staff recommendation based on the applicant’s testimony today. Henrichsen stated that the staff recommendation has not changed. The review of the floodplain application from 1999 reflects that it is a “no rise” in terms of the floodway, but not in terms of the flood fringe or floodplain overall.

Carlson believes the Commission has heard this same application before and recommended that it be denied. Henrichsen stated that the staff had previously always asked for it to be deferred for the overall plan to be submitted. That overall plan was submitted a month ago and has raised several questions about the impact of this commercial on the transportation network and the floodplain, and raised questions in regard to fitting the commercial in with a much larger arena being investigated for the city.

Nicole Fleck-Tooze of Public Works pointed out that we have a Comprehensive Plan in place that identifies future urban development in areas outside of the floodplain in terms of the strategies of the Comprehensive Plan to avoid flood risk to properties and preserve some important functions of the floodplain, i.e. flood storage, conveyance and water quality benefits. We have green space land use identified in the Comprehensive Plan. The staff has reviewed the technical summary provided for the “no rise” letter and it is her understanding that the “no rise” was for that area in the floodway, but not for the area in the flood fringe. It appears there is a rise of about 1/4 ft. at at least one of the crossings. It appears that the 1999 permit allowed for 70,000 cubic yards of fill from outside the floodplain. The cut and fill is balanced in the permit, but still, as we look at the site cumulatively, there would be some additional fill in terms of the staff’s review of what has been submitted.

Henrichsen further stated that the staff is not contesting that they have a valid floodplain fill permit, but this amendment is a request to change an area in the floodplain to allow commercial development. Page F79 of the Comprehensive Plan sets forth that a goal of floodplain management is to keep commercial development outside the area of the floodplain. Therefore, the staff does not believe it is appropriate to be changing that designation on a site that would increase the amount of fill within the floodplain.

Response by the Applicant

J.D. Burt responded that the floodplain permit the applicant is offering to alter has been in process for the last 2-3 weeks and falls underneath the guidelines and policies that are currently in place. The applicant has not pushed the issue as far as asking the city to expedite that approval in attempt to circumvent this process. The applicant understands that it is the city’s desire not to put any fill in the floodplain. However, the current policy allows that to happen. The applicant offers to amend the application to reduce that fill to basically zero. The applicant today proposes 57,000 to 58,000 cubic yards of fill material in the floodplain. There is nothing that prohibits the approval of that. The applicant is offering, as a concession in response to staff’s concern, to modify and not bring that 57,000 to 58,000 cubic yards into the floodplain, but to reduce that to fill that has already been approved as part of the 1999 permit. Burt clarified that there has not been 70,000 cubic yards of fill material brought in from outside. That permit is not complete. We are not asking for anything special. For a long period of time, the Ag Society has indicated their desire to potentially have some commercial on this corner to serve as accessory uses. As far as the arena, it has been no big secret that what is out there is phase one and there is ultimately going to be a larger arena. This site has not been proposed as a contender to that larger arena in the city versus any other location.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

May 28, 2003

Larson moved to deny, seconded by Carlson.

Carlson stated that he respects the applicant's floodplain situation and respects that they are trying to modify, but he believes it becomes a little odd to have a preferred plan to not develop in the floodplain and then have a governmental entity proposing to develop in the floodplain. He also believes this has potential to become crosswise with potential downtown plans and we need to be looking at everything in that whole context. Carlson further stated that he is not interested in putting the Fair Board into the hotel and restaurant business.

Steward commented, remembering that this is an amendment to the Comprehensive Plan, and for all discussion about transportation and floodplain, he believes these are issues that are best dealt with later. The larger question for him is one that the community has not resolved, and if the Comprehensive Plan is to be revised, he does not believe it should be revised by a sort of "creeping incrementalism" to something that is as large and as important to the community as the location of an event center. One event center here, another event center there, and suddenly the community finds it has no other options except to have split and uncoordinated event centers, leaving the City in a weak competitive position. Because that issue is undecided and the proper procedures are not implemented to make that decision, he will vote to deny.

Motion to deny carried 6-0: Larson, Bills-Strand, Duvall, Carlson, Taylor and Steward voting 'yes'; Krieser and Schwinn absent.

There being no further business, the meeting was adjourned at 2:45 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on June 11, 2003.